

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 29 July 2024

**Public Authority:** Wiltshire Council  
**Address:** County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from Wiltshire Council (“the Council”) regarding the estimated costs of a proposed transport link. The Council’s position is that it does not hold the information requested. The complainant disputes this.
2. The Commissioner’s decision is that he is satisfied that the Council does not hold the information requested. However, the Commissioner also finds that the Council breached regulation 9 of the EIR as it failed to provide adequate advice and assistance.
3. The Commissioner does not require further steps.

#### **Request and response**

---

4. On 1 November 2023, the complainant wrote to the Council and requested information in the following terms:

“Re. New Road Transport link from A4 Southwards Connecting to the A350 via a new river bridge I have a Wiltshire Council tender document HE1083 dated 4th March 2022 where an estimate of these costs was requested for a road 4.6 kms and river crossing of 450m <https://www.find-tender.service.gov.uk/Notice/006055-2022>”

Please provide the estimated costs returned from this tender which was used by Cabinet in Dec 2022 to take the decision to withdraw from the HIF bid.”

5. The Council responded on 29 November 2023. It stated that it held the requested information, however it refused to disclose it, citing the exceptions at regulation 12(5)(e) (confidentiality of commercial information) and regulation 12(5)(f) (interests of information provider) of the EIR as its bases for doing so.
6. Following an internal review the Council wrote to the complainant on 17 January 2024. It revised its position to state that it does not hold the information requested.

## Reasons for decision

---

### Regulation 12(4)(a) – information not held

7. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received”.
8. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
9. In their complaint to the Commissioner the complainant stated that they believe that although the bid was withdrawn, a tendering exercise was carried out prior to this and so the Council should hold the estimated costs information requested.
10. During the course of his investigation the Commissioner asked the Council to comment on the grounds given by the complainant for their belief that the Council holds the information requested. The Council’s response was as follows:

“The focus of both the request and the submission to the ICO is the estimated costs given to the council from bidders following the publication of a tender, which were then used by the council cabinet to inform their decision to withdraw the HIF bid.

[The complainant] has based his request on what he erroneously believed was a tender document; the document he provided a link to was (and still is) published as a Prior Information Notice (PIN). This type of notice is used by contracting authorities as advance notice for the benefit of commercial organisations to signal something is potentially going to go out to tender.

On this occasion the project did not go ahead as the plans for the road and bridge were shelved, therefore, no tender was ever issued and there could be no 'estimated tender costs' requested by or provided to the council.

As no such estimates were created by bidders or submitted to the council they could not, and were not, provided to cabinet to assist in their decision making in relation the HIF bid. The reasons for the cabinet decision to withdraw from the HIF bid are published in the minutes of their meetings available on the council website."

11. The Commissioner also asked the Council to explain its change in position between its initial response and its internal review response as to whether it held the information requested. The Council stated that it does hold some cost estimates for the whole of the road scheme, however this information was created and supplied to the council before the PIN was published. This cost information was not provided by bidders in response to a tendering exercise so is not in scope of the request. Its initial response referred to this information but the Council revised its position at internal review as this information was, in fact, not in scope.
12. The Commissioner is satisfied that cost estimates not provided in response to a tendering exercise are not in scope of the request. He has, however, considered below whether the Council provided adequate advice and assistance in relation to this.
13. Given the explanations provided by the Council as to why the information requested is not held, the Commissioner is satisfied that the Council does not hold the information requested.

### **Regulation 9 – Advice and Assistance**

14. Regulation 9(1) of the EIR requires public authorities to provide advice and assistance to requestors, so far as it would be reasonable to expect the authority to do so.

15. As stated in the Commissioner's guidance<sup>1</sup>, the duty to provide advice and assistance can be triggered if a public authority is aware, at the time of the request, that the applicant may actually be seeking other information, beyond what they have asked for in the request. The guidance states:

"In this situation, you should respond by providing the information the applicant has requested. However, if your examination of the request shows that the applicant is clearly seeking other information and what this is, you should also advise and assist them with a view to enabling them to make another request."

16. Although in its internal review response the Council did explain to the complainant that the tender never went ahead, it did not state that it did hold cost estimate information, albeit not obtained in response to a tendering exercise.
17. Given the circumstances of the case, particularly the fact that it was clear to the Council that the complainant was unaware that no tendering exercise had taken place, the Commissioner considers it would be reasonable to expect the Council to inform the complainant that it does hold cost estimate information, albeit not obtained in response to a tendering exercise, to enable them to make another request.
18. As the Council failed to inform the complainant of this, the Commissioner's decision is that the Council did not comply with its obligations under regulation 9(1) of the EIR to offer advice and assistance.

---

<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-9-advice-and-assistance/#advice>

## Right of appeal

---

19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**